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OFFICE OF PETITIONS

In re Application of
Partlo, et al.
Application No. 10/798,740
Filing Date: 10 March, 2004
Attorney Docket No. 2003-0083-01

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DECISION ON PETITION
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This is a decision on the petition filed on 25 October, 2004, and considered under 37 C.F.R. §1.53, to obtain a filing date of 10 March July, 2004, for Figs. 11, 12 and 13 as described in the specification of the application.

The petition is **GRANTED**.

BACKGROUND

This nonprovisional application was deposited on 10 March, 2004.

On 8 September, 2004, the Office mailed a "Notice to File Missing Parts of a Nonprovisional Application," (the 8 September Notice) and indicated, *inter alia*, that a filing date had granted.

The 8 September Notice also informed Petitioner that the application would receive the filing date consistent with the submission of required drawings, or that Petitioner might evidence that the papers in question were deposited with the application.

The petition filed on 25 October, 2004, states that it is accompanied, *inter alia*, by a date-

stamped receipt card itemizing the contents of the application received by the Office and copy of Figs. 11, 12 and 13 as described in the specification.

ANALYSIS

A review of the record reveals that:

- the instant application was deposited with the Office on 10 March, 2004; and
- the receipt card (see: MPEP §503¹) is date stamped ("03104") and provides, *inter alia*:

* * *

Utility Patent Application Transmittal (4 pgs.); Specification (37 pgs.); Claims (25 pgs.)
Abstract (1 pg) 29 Drawing Sheets; Unexecuted Declaration (5 pgs.);

* * *

¹ MPEP §503 provides in pertinent part:
§503 Application Number and Filing Receipt

* * *

A return postcard should be attached to *each* patent application for which a receipt is desired. It is important that the return postcard itemize all of the components of the application. If the postcard does not itemize each of the components of the application, it will not serve as evidence that any component which was not itemized was received by the United States Patent and Trademark Office (USPTO). It should be recognized that the identification of an application by application number does not necessarily signify that the USPTO has accepted the application as complete (37 C.F.R. §1.53(a)).

* * *

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the post-card initialed by the person receiving the items. Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO. (Emphasis supplied.)

The record further discloses that:

- the 26 sheets of drawings contained in the file prior to the filing of the petition contain Fig. 1; Fig. 1A; Fig. 2A; Fig. 2 B; Fig. 3; Fig. 4 and Fig. 5; Fig. 6A; Fig. 6B; Fig. 7; Fig. 8; Fig. 9; Fig. 13; Fig. 14, Fig. 15; Fig. 16; Fig. 17; Fig. 18; Fig. 19; Fig. 20; Fig. 21A; Fig. 21B; Fig. 22A; Fig. 22B; Fig. 22C; Fig. 22D; Fig. 22E, and there are no duplicate figures; and
- as indicated above, the receipt card date stamped by the Office acknowledges receipt of 29 sheets of drawings.

Because the return postcard receipt properly itemizes the contents of the application package in accordance with MPEP §503, the Office concludes that the 29 sheets of drawings (containing Figs. 1 through and including Fig. 22E) as described in the specification were submitted on 10 March, 2004, and subsequently was misplaced in the Office.

Accordingly, the petition under 37 C.F.R. §1.53 is **granted**; the petition fee is waived and is refunded to Deposit Account 03-4060; and the Notice mailed on 8 September, 2004, hereby is withdrawn as to the three sheets of drawings containing Fig. 11, Fig. 12, and Fig.13, as described in the specification.

This application is released to the Office of Initial Patent Examination for further processing with a filing date of 10 March, 2004, for the entire application and in particular for Fig. 11, Fig. 12 and Fig. 13 of the 29 sheets of drawings (containing Figs. 1 - 22E) as described in the specification using:

- pages 1 - 64 (Specification, Claims, Abstract) and Figs. 1 - 9 and 13 - 22E (in 26 sheets of drawings) deposited on 10 March, 2004; and
- the Fig. 11, Fig. 12 and Fig. 13, as described in the specification, deposited on 25 October, 2004;
- with direction to OIPE to correct Office records to reflect that 64 pages of specification (description, claims and abstract) and 29 sheets of drawings were present on filing on 10 March, 2004, and forward to Petitioner a corrected filing receipt setting forth a filing date of 10 March, 2004, reflecting therein that 64 pages of specification (description, claims and abstract) and 29 sheets of drawings were present on filing.

Thereafter, the application will be considered by the examiner in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.

A handwritten signature in black ink, appearing to be 'J. Gillon, Jr.', written in a cursive style.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions